

Missouri Department of Transportation

TEA-21 Reauthorization

Additional Issues

(Includes issues not in the One Missouri Position but are important to MoDOT)

Simplified Enhancement Program

Missouri Position

The reauthorization of TEA - 21 should include wording that will allow applicants to the transportation enhancement program to apply for and receive enhancement funds through a simplified "grant style" process.

The current process of utilizing the enhancement fund program has the same requirements as other major federal aid projects. The enhancement program is targeted to communities and groups that traditionally do not participate in a federally funded transportation program. Therefore, they do not have the experience to initiate the federal funding documentation.

This enhancement program would be of greater value to the local entities if it was administered through a process that resembled a grant program. This would provide the recipients an opportunity to receive the funds and then move forward with the project through appropriate certification.

Increase Federal Participation Fund Level on NHS

Missouri Position

The reauthorization of TEA - 21 should include language that will increase the level of federal participation to 90% on all federally funded projects on the entire National Highway System (NHS).

The current legislation allows projects on the Interstate system to be funded with up to 90% federal funds. The NHS system includes all of the Interstate system plus other national significant arterials. The entire NHS system should be eligible for 90% federal funds. This would allow the states' to stretch their limited funds to more transportation needs.

Rail Freight Program

Missouri Position:

Congress should recognize the importance of the nation's rail system as an integral part of the total transportation system by providing avenues to support rail freight needs through existing programs.

Rail freight is an important component in the movement of goods over the nation's transportation system. In the spirit of true multimodal and intermodal transportation needs the next transportation act can support rail transportation needs through existing programs.

Some issues that can be considered are: 1) allow greater flexibility in the use of funds to address highway/rail crossing safety issues for capital costs. 2) provide an opportunity for Congestion Mitigation and Air Quality funds to be applied to rail

freight needs when they meet the goals of the CMAQ funds. 3) Address some of the rail freight infrastructure financial needs through tax benefit programs and/or the direct the current 4.3 cent railroad diesel fuel tax to dedicated rail infrastructure programs instead of putting it in general revenue.

Passenger Rail Program

Missouri Position:

Congress should identify a program outside of the Highway Trust Fund that identifies a dedicated and predictable funding source for passenger rail needs on a multiyear bases.

There is a need to provide passenger rail service for a segment of the nation's population. The current programs are under funded and lack any type of long term continuity that will allow the states and national system to develop a long term passenger rail program.

A revised program should include the aspects of dedicated funding source, a multiyear program, funding level at 80% federal cost share for capital investment and support for a capital system that can support speeds up to 90 miles per hour.

MoDOT Examples

(Includes examples of pertinent issues from the One Missouri Position)

Unfunded Mandates

The next transportation bill should not contain any mandates that are not supported by a corresponding revenue stream that will fully fund the mandate.

Example: Open Container

The Transportation Equity Act for the 21st Century (TEA-21), H.R. 2400, P.L. 105-178, was passed by the United States Senate and House of Representatives on May 22, 1998 and signed into law on June 9, 1998. On July 22, 1998 a technical corrections bill entitled the TEA-21 Restoration Act, P.L. 105-206 was enacted to restore provisions that were agreed to by the conferees to TEA-21, but which were not included in the conference report. Section 1405 of the TEA-21 Restoration Act amended Title 23, United States Code (U.S.C.), by adding Section 154, to establish a program transferring a percentage of any state's federal-aid highway construction funds to the state's highway safety apportionment found in 23 USC Section 402 if the state fails to enact and enforce a conforming open container law.

This percentage was established as one and one half percent of a state's National Highway System, Surface Transportation Program and Interstate Maintenance funds beginning on October 1, 2000, and increasing to three percent of these same funds beginning on October 1, 2002. The funds transferred to the section 402 program are to be used for alcohol-impaired driving countermeasures or the enforcement of drinking and driving laws. However, states were also given the authority to elect to use all or a portion of the funds for hazard elimination activities pursuant to 23 U.S.C. Section 152. Such activities include guardrail installation, pavement marking projects and other projects designed to enhance the safety of motorists on highways but that are not highway construction-related.

To avoid the transfer of funds, Section 154 requires that a state enact and enforce a law that prohibits the possession of any open alcoholic beverage container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the state. As of October 1, 2000, 31 states and the District of Columbia had enacted federally compliant open container laws.

Without a compliant open container law, MoDOT is required to transfer federal construction dollars to section 402 or section 152. This limitation restricts MoDOT from making transportation project decisions based on the best investment of

transportation dollars and instead increases the amount of federal dollars over which MoDOT has no discretion on how to spend. MoDOT believes that federal mandates should not be tied to existing federal transportation funds.

In October 2000 MoDOT transferred \$5.2 million dollars in federal funds to Missouri's Department of Public Safety. The Department of Public Safety used all of these funds.

In October 2001 MoDOT transferred \$5.3 million dollars in federal funds to Missouri's Department of Public Safety. The Department of Public Safety used \$200,000 of these funds. The remaining \$5.1 million was returned to MoDOT to use to eliminate safety hazards.

In October 2002 MoDOT estimates it will transfer \$10.4 million dollars in federal funds to Missouri's Department of Public Safety.

MoDOT and the Department of Public Safety are in the process of determining the best use of the transfer funds.

Environmental Streamlining

Example 1: SEMA/FEMA Flood Buyout Properties and Open Space Restrictions

MoDOT requests that the U.S. Congress consider a change in the Federal Emergency Management Agency (FEMA) definition of "structures" or "development" in the Hazard Mitigation Grant Program (HMGP), codified at 44 CFR 206.434(d) and Section 404 of the Stafford Act, and the Flood Mitigation Assistance Program to specifically exclude highways and highway bridges. This is to streamline the process of constructing highways and highway bridges across lands within the flood buyout program. The change in definition should be made to apply to all existing and proposed flood buyout properties, not just those coming after the change in the definition. This action will provide relief and will streamline the highway project development process for states nationwide.

Background and Implications for MoDOT Projects

The federal government, through the Federal Emergency Management Agency (FEMA), administers a program to purchase flood-prone properties, instead of repeatedly providing disaster relief after each flooding episode.

As the state liaison for FEMA, the Missouri State Emergency Management Agency (SEMA) finds willing sellers of flood-damaged properties. FEMA funding through the Hazard Mitigation Grant Program (HMGP), codified at 44 CFR 206.434(d) and Section 404 of the Stafford Act, and the Flood Mitigation Assistance Program is utilized as federal share. A state/local match is also required. After purchase, the properties are owned by various local public jurisdictions (cities and counties).

There are several thousand “flood buyout” parcels throughout the state, now owned by 66 local governmental jurisdictions. Even though FEMA allows private ownership of buyout properties, SEMA only allows public ownership in Missouri.

The deeds for the buyout properties carry a restriction (open space standards) mandated by federal law (44 CFR 206.434(d)) that requires:

- property shall be dedicated and maintained in perpetuity for uses compatible with open space, recreation or wetlands management practices
- no new structures will be built, with a few narrow exceptions

These provisions preclude development of the properties, including placement of fill material or bridge piers. Therefore, the deed restrictions are a constraint to building roads and bridges. The challenge for MoDOT is to try to avoid the properties, but, if avoidance is not possible, then what is our recourse if federal law excludes use of the properties for transportation improvements?

Example Project

MoDOT has identified the Route 61/67 (Lemay Ferry Road) bridge over the Meramec River as one of the state’s worst bridges and one of the St. Louis area’s ten worst bridges. This proposed project has brought the buyout property issue to the forefront for MoDOT. A plan to replace the aging and obsolete bridge during 2003 is being implemented.

The area adjacent to the existing bridge location contains several properties purchased through the HGMP. MoDOT cannot construct the replacement bridge without affecting portions of the buy-out properties now owned by St. Louis County and the City of Arnold. The buyout land is found on both the upstream and downstream sides of the existing bridge. Less than five acres of buyout land will be permanently affected by construction of the replacement bridge.

We have worked with SEMA to obtain relief from the open space restrictions for the Route 61/67 project. On March 30, 2001, MoDOT submitted a request through SEMA for relief from the development restrictions on the buyout property affected by the Meramec River bridge project. The request was forwarded by SEMA to FEMA’s Kansas City regional office, then on to the FEMA Director’s office in Washington, D.C. On July 31, 2002, FEMA granted approval to construct the Meramec River replacement bridge, subject to several conditions. All conditions were fulfilled as of September 6, 2002. FEMA is now preparing the legal instruments to amend the warranty deeds allowing construction activities to take place. For the bridge replacement project to move forward as promised to the public, the deed amendments are needed from FEMA as soon as possible.

The Route 61/67 project has helped to focus attention on this issue at the federal level. The Federal Highway Administration (FHWA) and FEMA have discussed the issue and are working jointly to draft a Memorandum of Agreement (MOA) on the topic. FHWA hopes to develop a nationwide MOA that addresses transportation needs related to development restrictions placed on flood buyout properties.

In the meantime, MoDOT hopes to begin working with SEMA staff to jointly develop a geographic information system (GIS is in place) database containing the buyout parcels. However, even if deed-restricted parcels are detected early, it is highly likely that buyout properties will be encountered again and will constrain other transportation projects, as MoDOT has made a commitment to replace hundreds of bridges across the state.

Example 2: US Coast Guard/ FHWA Streamlining for Major Bridge Projects

MoDOT requests that the U.S. Congress consider a change in the way two US DOT agencies, the Federal Highway Administration (FHWA) and the US Coast Guard (USCG), cooperate to facilitate construction of highway and bridge projects over navigable streams and waterways. This action will shorten the highway project development process timeline for states nationwide.

Background and Implications for MoDOT Projects

The federal government, through the FHWA, administers a program to approve the location and the design of federally funded highway and bridge construction projects. Approval of the location is tied to the successful completion of the National Environmental Policy Act (NEPA) requirements related to the purpose and need for a project, the range of alternatives examined, the expected environmental impacts, public involvement in the decision-making and the selection of a selected alternative. For projects over navigable waterways, the USCG has permit authority for bridges spanning those navigable waterways. The USCG is a "cooperating agency" regarding the preparation of FHWA NEPA documents leading to the selected solution. The intent is that the cooperating agencies in the preparation of a NEPA document contribute to that NEPA process and the selection of the solution. This should expedite the permit approval process for permits such as the USCG Bridge permits. The USCG has been a cooperating agency for Missouri bridge NEPA projects that are over navigable waterways. The intensity of USCG participation has varied from project to project. However, even as a cooperating agency, the USCG has not participated in all agency meetings concerning a given project.

Once the NEPA documents are approved by the FHWA, MoDOT applies for a USCG Bridge Permit. Unfortunately, the USCG Bridge Permit approval process duplicates many aspects of the NEPA process followed by FHWA and MoDOT.

The USCG Bridge Permit process can cause delays in MoDOT's project development process for bridges over navigable waterways. MoDOT feels that the timeliness of this process could be improved substantially.

Example Project and Specific Issues

MoDOT has identified the Route 65 Missouri River Bridge project at Waverly as an example of the shortcomings of the current USCG Bridge Permit process. A project

to replace the aging and obsolete bridge is under construction. The issues are detailed below.

1. The USCG does not begin the permit review and approval process until they have all the information necessary (including NEPA approval) to consider a permit application.

For the Waverly Bridge Permit application process, the USCG did not begin its processing of MoDOT's Bridge Permit application until the NEPA approval had been obtained and until all the requisite information was received by the USCG. MoDOT believes the permit application review process could be initiated sooner because of the USCG involvement in the NEPA decision-making.

2. The USCG re-reviews the entire FHWA NEPA document to assure that all conceivable environmental issues are addressed. The USCG makes comments on other topics unrelated to navigation issues and not germane to considering and receiving the USCG Bridge Permit.

Although the USCG has been a cooperating agency for the Waverly Bridge project (and for others around Missouri), the practice of the USCG is to re-examine the FHWA-approved NEPA document in minute detail. The USCG often makes comments about the details regarding issues beyond the navigation channel of the waterways. We have seen USCG comments on noise studies, parkland issues, floodplain permits, the alternatives that were considered and more. MoDOT is concerned the USCG spends time raising detailed questions about non-navigation issues already addressed and approved by a US DOT sister agency. This causes redundant work for MoDOT and FHWA staff.

3. The USCG has a minimum 6-month permit approval schedule that includes circulation to USCG offices in New Orleans, LA and Washington, D.C. prior to the permit approval.

This 6-month permit approval schedule is the average time we have seen for MoDOT Bridge Permits. However, the approval schedule should be streamlined, especially if the USCG does not re-review the FHWA NEPA approval and question aspects of that decision. After the St. Louis Office of the USCG has the information necessary to make the bridge permit decision, MoDOT questions why the approval has to be prolonged by the USCG because of circulation of that pending decision to the USCG offices in New Orleans and then Washington, D.C. We suggest these USCG offices provide a "quality assurance role" using a periodic review of the decisions made by the USCG local office. This reflects the FHWA Program Review process.

4. FHWA does not emphasize to the USCG that FHWA is the lead federal agency for the action and it has not asked the USCG why it is concerned with the non-navigational aspects of projects that already have received FHWA approval through the approval of the NEPA documents. The USCG and FHWA are both sister agencies within the US Department of Transportation.

FHWA has oversight for highway projects extending beyond (and across) the navigation channel of navigable rivers. The USCG bridge permit authority is apparently from bridge abutment to bridge abutment. As a sister USDOT agency, the USCG should rely on the FHWA as the lead agency for project review and NEPA responsibilities beyond the navigation channel. FHWA will have responsibilities for the decision-making and will be the go-to federal agency if the NEPA and location decisions are challenged.

Status of the Route 65, Waverly Bridge project

The initiation of the USCG Bridge Permit application process was delayed by an oversight by MoDOT's NEPA consultant who overlooked a parkland issue in Waverly. This delayed the Section 4(f) Evaluation approval process by FHWA. Although we faced the issues of concern noted above regarding our coordination with the USCG and FHWA for the Waverly Bridge project, the USCG was attentive and the USCG Bridge Permit was received in 4½ months. The new Waverly Bridge is currently under construction.

Highway Trust Fund Diversions

MoDOT requests that the U.S. Congress redirect the 2.5 cents in ethanol fuel tax receipts from the General Revenue Fund to the Highway Trust Fund. The next transportation bill should credit the Highway Trust Fund (HTF) with the \$350-400 million per year in annual revenue from the 2.5 cents per gallon of fuel tax on gasohol that is credited to the General Fund of the Treasury.

Example: Ethanol Fuel Tax Receipts

Ethanol is a type of alcohol made from grain or agricultural waste. It is difficult to transport and it is used close to where it is produced, primarily in the Midwest.

Since 1978, a special federal fuel tax subsidy for ethanol fuel has existed. Since then, ethanol has been taxed at a reduced rate compared to gasoline. The federal fuel tax subsidy for 10 percent blend is currently 13.1 cents per gallon, that is, 5.3 cents per gallon less than for gasoline, which is taxed at 18.4 cents per gallon.

The Highway Trust Fund does not receive the entire 13.1 cents per gallon tax imposed on ethanol. The General Fund receives 2.5 cents of those 13.1 cents per gallon.

MoDOT believes that agricultural, economic development, energy and environmental policy goals related to ethanol fuels are important to the Midwest and to the United States. However, MoDOT believes that this concern for ethanol should not result in reduced Highway Trust Fund revenues.

As a result, MoDOT requests that the U.S. Congress redirect the 2.5 cents in ethanol fuel tax receipts from the General Fund to the Highway Trust Fund. Additionally, MoDOT requests that the U.S. Congress evaluate methods that will allow the production and consumption of ethanol and ethanol fuels, without negatively affecting transportation revenues deposited to the Highway Trust Fund and sent back to the states, such as the loss of the 5.3 cent tax differential currently in force.

MoDOT

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